



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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ATTN: Section 1813 ROW Study
Office of Indian Energy and Economic Development
Room 20 – South Interior Building
1951 Constitution Avenue NW
Washington D.C. 20245

Sent via email to: IEED@bia.edu

To whom it may concern:

The Nez Perce Tribe would like to submit the following comments on the draft Energy Policy Act of 2005, Section 1813, Indian Land Rights-Of-Way Study.

Section 1.3.1 discusses the importance of tribal sovereignty in the determination of access to tribal lands and how tribal governmental involvement is necessary to prevent harm to reservation resources, cultural resources and sacred sites. This section should be expounded upon as the importance of the concept cannot be understated. Tribal governments and the idea of self-determination have their roots in a preservation of what is important to those tribal members. Determination of access to certain land is the most basic manifestation of this concept.

Section 1.3.2 discusses the argument by industry partners that costs for rights-of-way are rising. The veracity of such statements and data must be clearly proven in the report if they are to be included as a basis for any determination or recommendations. Also, the context of such trends must be explained. For example if data shows an increase in the cost of certain rights-of-way, the data should also reflect whether those prior agreements were for reasonable fees or if they were undervalued. Simply because fees may be higher now does not necessarily mean that the fees are unreasonable. Better bargaining by a tribe or tribal member should not be shown as an unreasonable price increase.

A similar comment goes for the discussion in 1.3.3 and 1.3.4 regarding any difficulties in negotiations and a decrease in the length of contracts. Any data that reflects such statements must be verified and put into context. Any changes in negotiations or the length of such contracts can easily indicate a more level bargaining environment than was common in the past

and is not necessarily reflective of detrimental changes to how such processes take place today. Industry should not be able to complain about a change in the business environment that simply is not in its favor.

Certainty also seems to be a theme that is recurrent throughout the report. As such it is important that such an idea be examined on all sides. Providing certainty for one party in a negotiation through the use of a generic formula or valuation does not necessarily equate to a fair negotiation process. Constricting a tribe to a standard valuation would undermine the ability of that tribe to exercise self-determination and sovereignty in a negotiation and protect the resources of its people. Every tribe has different factors that are considered when entering into such transactions. A tribe will not enter into an agreement that is not in the best interests of its people. If such a transaction is beneficial to the parties involved, compromises will be reached on the negotiation. A standard valuation may provide certainty for a party in the negotiation but at the expense of a fair negotiation. In addition, it should be noted that this study itself has added a degree of uncertainty to such transactions that did not exist prior. Companies and tribes that were in negotiations are now forced to wait for the outcome of this report before they can move forward. Also, more substance can be given to the positive working relationships that do exist between tribes and industry partners.

1.3.7 discusses the cost to consumers of this issue. In such a discussion, it should be noted that the cost of a right-of-way is simply one part of a complex and interrelated chain of parts that make up the process of the creation and transportation of energy. There are many variable and volatile factors that affect the ultimate price of energy to a consumer. Any costs that a consumer pays for energy have to be examined in this larger context to understand the real impact right-of-way negotiations have on the industry.

In Part 3, the report also discusses the national security implications of this issue. The report states that existing authority is sufficient. Because of the sensitive nature of national security issues at this time, it is important that these conclusions be made as clear and definitive as possible.

The suggestion of the development of a comprehensive right-of-way inventory may be beneficial and should be explored more thoroughly to see if there is any possible interconnection with present record keeping done by the Bureau of Indian Affairs.

Overall, the report indicates that there are not significant problems in this area and that the majority of arguments posed by Industry concern the potential for problems or described incidents that are not the norm. As a result, it is strongly suggested that the recommendation be made to Congress that no action needs to be taken on this issue. The other suggestions, by their mere presence, suggest that there is an underlying problem that must be fixed. One of these suggestions provide for the extreme action of condemnation that is not supported by the conclusions of the report. To provide it as an option, given the findings, is counter-intuitive. On the contrary, the report shows a system that is working while it is yet still evolving to reflect the modern realities of a sophisticated tribal government.

Thank you for your consideration of the comments of the Nez Perce Tribe.

Sincerely,

Samuel N. Penney

for Rebecca A. Miles